



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-914]

Certain Sulfentrazone, Sulfentrazone Compositions, and Processes for Making Sulfentrazone;

Notice of the Commission's Determination Denying Complainant's Motion for Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm with modifications the initial determination ("ID") of the presiding administrative law judge ("ALJ") denying the complainant's motion for temporary relief.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation

on April 14, 2014, based on a complaint filed by FMC Corporation (“FMC”) on March 5, 2014. 79 FR 20907-08. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sulfentrazone active ingredient and formulated sulfentrazone compositions made by a process that infringes certain claims of U.S. Patent No. 7,169,952 (“the ’952 patent”). The Commission’s notice of investigation named as respondents Beijing Nutrichem Science and Technology Stock Co., Ltd., of Beijing, China (“Beijing Nutrichem”); Summit Agro USA, LLC, of Cary, North Carolina; Summit Agro North America, Holding Corporation of New York, New York (together, “Summit”); and Jiangxi Heyi Chemicals Co. Ltd. of Jiujiang City, China (“Heyi”). *Id.* at 20908. The ALJ later granted FMC’s motion to amend the complaint and notice of investigation to replace Beijing Nutrichem with Nutrichem Co., Ltd. (“Nutrichem”). Order No. 9 (May 29, 2014), *not reviewed* June 23, 2014. The Office of Unfair Import Investigations is also a party to the investigation.

FMC filed a motion for a temporary exclusion order and a temporary cease and desist order against Summit, Heyi, and Nutrichem (“Respondents”) along with its Complaint. On August 12, 2014, the ALJ issued an ID denying FMC’s motion. The ALJ found that FMC had not shown that any of the temporary relief factors weighed in favor of granting temporary relief. The ALJ found that FMC had not shown that it was likely to succeed on the merits because FMC had not shown that it would likely succeed on the issues of invalidity, infringement, the technical prong of the domestic industry requirement, or the economic prong of the domestic industry requirement. The ALJ also

found that FMC had not shown irreparable harm if temporary relief is not granted, that the balance of hardships favor granting temporary relief, or that the public interest favors granting temporary relief.

On August 22, 2014, FMC filed comments contending that the ALJ made numerous errors of law and fact in the ID. On August 26, 2014, Respondents and the Commission investigative attorney filed responses contending that the ALJ did not err.

Having examined the record of this investigation, including the ALJ's ID and the submissions from the parties, the Commission has determined that FMC has not proven that it is entitled to temporary relief. The Commission affirms the ALJ's findings with certain modified reasoning. A Commission Opinion will issue shortly.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 11, 2014.

Jennifer D. Rohrbach,
Supervisory Attorney.